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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: FEB 02 2010
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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

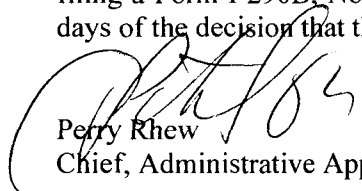
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks the beneficiary's classification as an employment based immigrant pursuant to section 203(b)(2) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(2) as an advanced degree professional.¹ The petition was accompanied by an approved Application for Permanent Employment Certification, ETA Form 9089 from the Department of Labor (DOL). The director determined that the petitioner failed to establish that the beneficiary had obtained the required 24 months of employment experience in the job offered and denied the petition accordingly.

Review of USCIS records indicates that, subsequent to the filing of the instant petition and appeal, on January 6, 2010, DOL revoked the certification of the ETA Form 9089 pursuant to the regulation at 20 C.F.R. § 656.32. DOL issued a Notice of Revocation, which provides in relevant part:

On October 23, 2009, the Department sent [REDACTED] [the petitioner] a *Notice of Intent to Revoke* the application and provided it with 30 days within which to submit rebuttal evidence. The employer has not responded to the Notice within the timeframe provided. Therefore, pursuant to 20 C.F.R. § 656.32(b)(2), the *Notice of Intent to Revoke* has become the final decision of the Secretary of Labor. . . .

In this matter, section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2) provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. However, the petition must be accompanied by an individual labor certification approved by the Department of Labor. *See* 8 C.F.R. § 204.5(k)(4). Because this labor certification has been revoked, the petition is not supported by a valid labor certification, and further pursuit of the matter at hand is moot.

ORDER: The appeal is dismissed, based on DOL's revocation of certification of the ETA Form 9089, as the petition is no longer supported by a valid labor certification.

¹ In relevant part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level. The equivalent of an advanced degree is either a United States baccalaureate or foreign equivalent degree followed by at least five years of "progressive experience" in the specialty. 8 C.F.R. § 204.5(k)(2).